

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA**

In re: The National Piano Institute Corporation)
Defined Benefit Pension Plan)
PENSION BENEFIT GUARANTY CORPORATION,)
Plaintiff,)
v.) Case No. 0:16-cv-61355-KMW
NATIONAL PIANO INSTITUTE CORPORATION et al.,)
Defendants.)
_____)

**PLAINTIFF PENSION BENEFIT GUARANTY CORPORATION’S
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Plaintiff Pension Benefit Guaranty Corporation (“PBGC”), on its own behalf and as statutory trustee of the National Piano Institute Corporation Defined Benefit Pension Plan (the “Pension Plan”), hereby files this memorandum in support of its motion for summary judgment on its Complaint. PBGC filed a complaint (“Complaint”) against National Piano Institute Corporation, as incorporated in Florida (“National Piano-Florida”) and National Piano Institute Corporation, as incorporated in California (“National Piano-California”) (collectively, the “Defendants”) on June 22, 2016.¹ On November 21, 2016, Defendants filed a joint answer to the Complaint (“Answer”).² Because there is no material dispute of fact, the Court should grant this motion, enter judgment in favor of PBGC and the Pension Plan, require Defendants to pay all liabilities arising from the termination of the Pension Plan, and award PBGC all relief that is just and proper.

¹ *PBGC v. National Piano Corporation, et al.*, Case No:16-cv-61355, Docket No. 1 (June 22, 2016).

² Defendants' Answer to the Complaint, Docket No. 27 (Nov. 21, 2016).

STATUTORY BACKGROUND

PBGC is a wholly owned United States government corporation and an agency of the United States established to administer and enforce the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended* (“ERISA”).³ Title IV of ERISA constitutes the exclusive means by which a pension plan covered by its provisions may be terminated.⁴ If a pension plan lacks sufficient assets to pay accrued benefits, and PBGC determines that certain statutory criteria have been met, PBGC may initiate plan termination.⁵ When an underfunded plan terminates, PBGC generally becomes trustee of the plan and supplements any remaining plan assets with its insurance funds to pay retired employees their pension benefits, subject to statutory limits.⁶ PBGC’s insurance funds are made up of (i) assets of terminated underfunded pension plans, (ii) the agency’s recoveries from entities legally responsible for those terminated pension plans, (iii) premiums paid by pension plan sponsors, and (iv) investment income.

Upon a PBGC-initiated termination, the contributing sponsor⁷ and its controlled group members⁸ are subject to certain liabilities with regard to the terminated pension plan, for which they are jointly and severally liable including:⁹ (i) the total amount of the pension plan’s unfunded benefit liabilities,¹⁰ plus interest (“Employer Liability”); (ii) the total amount of missed minimum funding contributions (“Missed Minimum Funding Contributions”),¹¹ plus interest;

³ 29 U.S.C. §§ 1301-1461 (2012 & Supp. II 2014).

⁴ 29 U.S.C. § 1341.

⁵ 29 U.S.C. § 1342.

⁶ 29 U.S.C. §§ 1321-1322, 1342, 1361.

⁷ 29 U.S.C. § 1301(a)(13).

⁸ 29 U.S.C. § 1301(a)(14).

⁹ 29 U.S.C. §§ 1306, 1307, 1362.

¹⁰ 29 U.S.C. § 1301(a)(18) and 29 C.F.R. § 4062.3(a).

¹¹ 29 U.S.C. §§ 1082, 1083.

(iii) the total amount of insurance premiums,¹² (“Insurance Premiums”), plus interest; and (iv) the total amount of termination premiums,¹³ (“Termination Premiums”), plus interest. PBGC, as statutory trustee of a terminated pension plan, has the authority to collect all amounts owed to itself and to the pension plan.¹⁴

STATEMENT OF FACTS

A. The Pension Plan

National Piano-California established the Pension Plan to provide retirement benefits for certain of its employees, effective October 1, 2002.¹⁵ The Pension Plan is a single-employer pension plan within the meaning of 29 U.S.C. § 1301(a)(15), and is a covered plan under Title IV of ERISA.¹⁶ At all relevant times, National Piano-California was the contributing sponsor of the Pension Plan, within the meaning of 29 U.S.C. § 1301(a)(1), (13). Mr. Anthony Siciliano owned 100% of National Piano-California and 100% of National Piano-Florida.¹⁷ Accordingly, National Piano-Florida is a member of National Piano-California’s controlled group within the meaning of 29 U.S.C. § 1301(a)(14).

B. Termination and Trusteeship

On April 15, 2014, pursuant to 29 U.S.C. § 1342(a), PBGC issued notice to National Piano-California of PBGC’s determination that the Pension Plan should be terminated.¹⁸ By agreement between PBGC and National Piano-California entered into May 7, 2014, the Pension

¹² 29 U.S.C. § 1306(a)(3).

¹³ 29 U.S.C. § 1306(a)(7).

¹⁴ 29 U.S.C. §§ 1082(b)(2), 1342(d), 1362(c); 26 U.S.C. § 412(b)(2).

¹⁵ See excerpt of National Piano Institute Corporation Defined Benefit Plan, attached hereto as Ex. A. The full document may be made available upon the Court’s request.

¹⁶ See 29 U.S.C. § 1321(a); see also Letter from the Internal Revenue Service, dated May 20, 2005, attached hereto as Ex. B.

¹⁷ Complaint at 4 and Answer at 2.

¹⁸ See Notice of Determination, attached hereto as Ex. C.

Plan was terminated under 29 U.S.C. §§ 1342 and 1348, with an effective termination date of February 18, 2009.¹⁹ PBGC became trustee of the Pension Plan under 29 U.S.C. § 1342(c).²⁰

C. Plan Termination Liability

As explained above, generally four types of liability arise when a pension plan is terminated. Here, PBGC (1) estimates that on February 18, 2009, the date the Pension Plan was terminated, the amount of Employer Liability was \$464,710;²¹ (2) asserts that on February 18, 2009, the amount of Missed Minimum Funding Contributions was \$16,847;²² (3) asserts the amount of Insurance Premiums owed to PBGC totaled \$11,122.23 as of March 20, 2013, including interest and penalties through October 1, 2012;²³ and (4) asserts that Termination Premiums of \$23,750 became due on June 30, 2015, and Termination Premiums of \$23,750 became due on June 30, 2016.²⁴

STANDARD OF REVIEW

Summary judgment is warranted when the pleadings and evidence demonstrate “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”²⁵ In deciding whether to grant summary judgment, the Court “must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most

¹⁹ See Agreement for Appointment of Trustee and Termination of Plan, attached hereto as Ex. D.

²⁰ *Id.*

²¹ See Pension Information Profile, attached hereto as Ex. E. Interest continues to accrue under 29 C.F.R. § 4062.7.

²² See Ex. E. Interest and penalties continue to accrue under 29 U.S.C. §§ 1342(d)(1)(B)(ii) and 1362(c).

²³ See Premium Statement, attached hereto as Ex. F; *see also* 29 U.S.C. § 1307(e)(2). Interest and penalties continue to accrue under 29 C.F.R. §§ 4007.7, 4007.8.

²⁴ See Ex. E; 29 U.S.C. § 1306(a)(7); 29 C.F.R. § 4007.13(f). Interest and penalties continue to accrue. A third and final payment of \$23,750 will become due on June 30, 2017.

²⁵ Fed. R. Civ. P. 56(a).

favorable to the nonmoving party,”²⁶ and “must resolve all reasonable doubts about the facts in favor of the non-movant.”²⁷

ARGUMENT

Given the factual allegations PBGC made in its Complaint, and the admissions subsequently made by Defendants, no material issue of fact exists relating to the termination and trusteeship of the Pension Plan. No material issue of fact exists as to the occurrence of statutory liabilities that arose upon termination and trusteeship of the Pension Plan. No material issue of fact exists as to PBGC’s authority to collect these liabilities. And no material issue of fact exists as to the amount of liability. As a result, PBGC is entitled to judgment as a matter of law.

I. The Pension Plan was terminated and PBGC became trustee pursuant to Title IV of ERISA.

In Title IV of ERISA, Congress authorized PBGC to determine that a pension plan should be terminated if PBGC concludes that the plan meets any one of the four criteria specified in 29 U.S.C. § 1342(a). In 2013, PBGC became aware of the Pension Plan’s severe underfunding and that the plan sponsor National Piano-California had not made a minimum required funding contribution for more than 6 years. PBGC initiated contact with the owner, Mr. Siciliano. After extensive due diligence, PBGC determined that the Pension Plan should be terminated under 29 U.S.C. § 1342(a)(1) and (2) because the Pension Plan had not met the minimum funding standard and the Pension Plan would be unable to pay benefits when due.²⁸ PBGC also determined that the Pension Plan should be terminated under 29 U.S.C. § 1342(c) to protect the interests of the Pension Plan’s participants.²⁹ By agreement between PBGC and

²⁶ *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997).

²⁷ *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1558 (11th Cir. 1990).

²⁸ See Ex. C.

²⁹ *Id.*

National Piano-California entered into May 7, 2014, the Pension Plan was terminated under 29 U.S.C. §§ 1342 and 1348, with an effective termination date of February 18, 2009. PBGC became trustee of the Pension Plan under 29 U.S.C. § 1342(c).³⁰ Defendants do not dispute this.³¹

II. Liabilities arising from the termination of the Pension Plan arose automatically pursuant to Title IV of ERISA

Businesses that are under common control are part of the same “controlled group” and are jointly and severally liable for several pension plan obligations.³² On February 18, 2009, Mr. Siciliano owned 100% of National Piano-California and 100% of National Piano-Florida. Defendants do not dispute this.³³ Therefore, on the date of plan termination, February 18, 2009, National Piano-Florida was in the controlled group of National Piano-California and is jointly and severally liable.³⁴

PBGC calculates the pension-related liabilities of Employer Liability,³⁵ Missed Minimum Funding Contributions,³⁶ Insurance Premiums,³⁷ and Termination Premiums³⁸ pursuant to formulae under federal statutes and regulations. In their Answer, Defendants deny the amount of liability claimed by PBGC, but include no support for such denial.³⁹ Defendants have never challenged PBGC’s actuarial analysis or provided alternative calculations of the statutory liability owed. Here, the liabilities owed are based on federal law and information

³⁰ *Id.*

³¹ Answer ¶ 19.

³² See 29 U.S.C. § 1301(a)(14), 29 C.F.R. § 4001.3, 26 U.S.C. §§ 414(b) & (c), Treas. Reg. §§ 1.414(b)-1 and (c)-2.

³³ Answer ¶ 22-23.

³⁴ See 29 U.S.C. § 1301(a)(14)(A), (B); 29 C.F.R. § 4001.3(b); 26 C.F.R. § 1.414(c)-2(c).

³⁵ 29 U.S.C. § 1362(b); 29 C.F.R. §§ 4062.3(a), 4062.7(a), (c).

³⁶ 29 U.S.C. §§ 1082, 1083.

³⁷ 29 C.F.R. §§ 4006.3, 4007.7, 4007.8.

³⁸ 29 C.F.R. §§ 4006.7, 4007.7, 4007.13(c).

³⁹ Answer at 4.

publicly filed by the Pension Plan or provided to PBGC by the Defendants. In such a case, Defendants' mere assertion that damages are inaccurate, without more, does not amount to a material issue of fact.⁴⁰

III. As statutory trustee of the Pension Plan, PBGC has authority to collect applicable liability

PBGC is endowed with authority under federal law to collect liabilities arising from and relating to the termination of a pension plan.⁴¹ Defendants assert that claims for these liabilities are barred by statute of limitations.⁴² No applicable statute of limitations has run.⁴³ When PBGC brings a civil action in its capacity as a statutory trustee of a terminated pension plan, as in this case, PBGC generally has at least three years from the date of trusteeship to bring suit.⁴⁴ The date of trusteeship of this Pension Plan is May 7, 2014; the Complaint was filed on June 22, 2016.⁴⁵ In any event, such a defense is legal in nature, and no genuine dispute of material fact exists.

Defendants further assert, without elaboration, that PBGC's claims "are barred by the doctrines of laches, waiver, estoppel, ratification, and/or unclean hands."⁴⁶ No evidence of laches, waiver, estoppel, ratification, or unclean hands exists. PBGC filed its Complaint in a timely manner.⁴⁷ PBGC has not waived any rights under Title IV of ERISA, nor is PBGC estopped from asserting any claims allowable under the law. Finally, Defendants assert that

⁴⁰ Even if there were a genuine issue of fact as to the amount of liability, the Court should grant summary judgment on the issue of liability alone. Fed. R. Civ. P. 56(c).

⁴¹ 29 U.S.C. § 1342(d)(1)(B)(ii), (iv).

⁴² Answer at 4.

⁴³ See 29 U.S. Code § 1303(e)(6).

⁴⁴ *Id.*

⁴⁵ Complaint at 1.

⁴⁶ Answer at 4.

⁴⁷ Complaint at 1.

PBGC failed “to state a cause of action upon which relief may be granted[.]”⁴⁸ On the contrary, PBGC specifically brought this action under ERISA to collect:

(1) the statutory liability arising under 29 U.S.C. §§ 1362(a), (b) for unfunded benefit liabilities owed to PBGC as a result of the termination of the National Piano Institute Corporation Defined Benefit Plan (the “Pension Plan”); (2) the statutory liability arising under 29 U.S.C. §§ 1082, 1083 for missed minimum funding contributions and (3) the statutory liability arising under 29 U.S.C. §§ 1306 and 1307 for unpaid pension insurance premiums and termination premiums.⁴⁹

In summary, Defendants offer a litany of unexplained, unsubstantiated defenses, none of which creates a genuine issue of material of fact.

CONCLUSION

Based on the foregoing, PBGC respectfully requests that the Court grant its Motion for Summary Judgment and enter the relief set forth in the proposed Order, as there are no material issues of fact outstanding, and PBGC is clearly entitled to judgment as a matter of law.

Dated: June 16, 2017

Respectfully submitted,

/s/ Kelly R. Cusick

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⁴⁸ Answer at 5.

⁴⁹ Complaint ¶ 1.

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